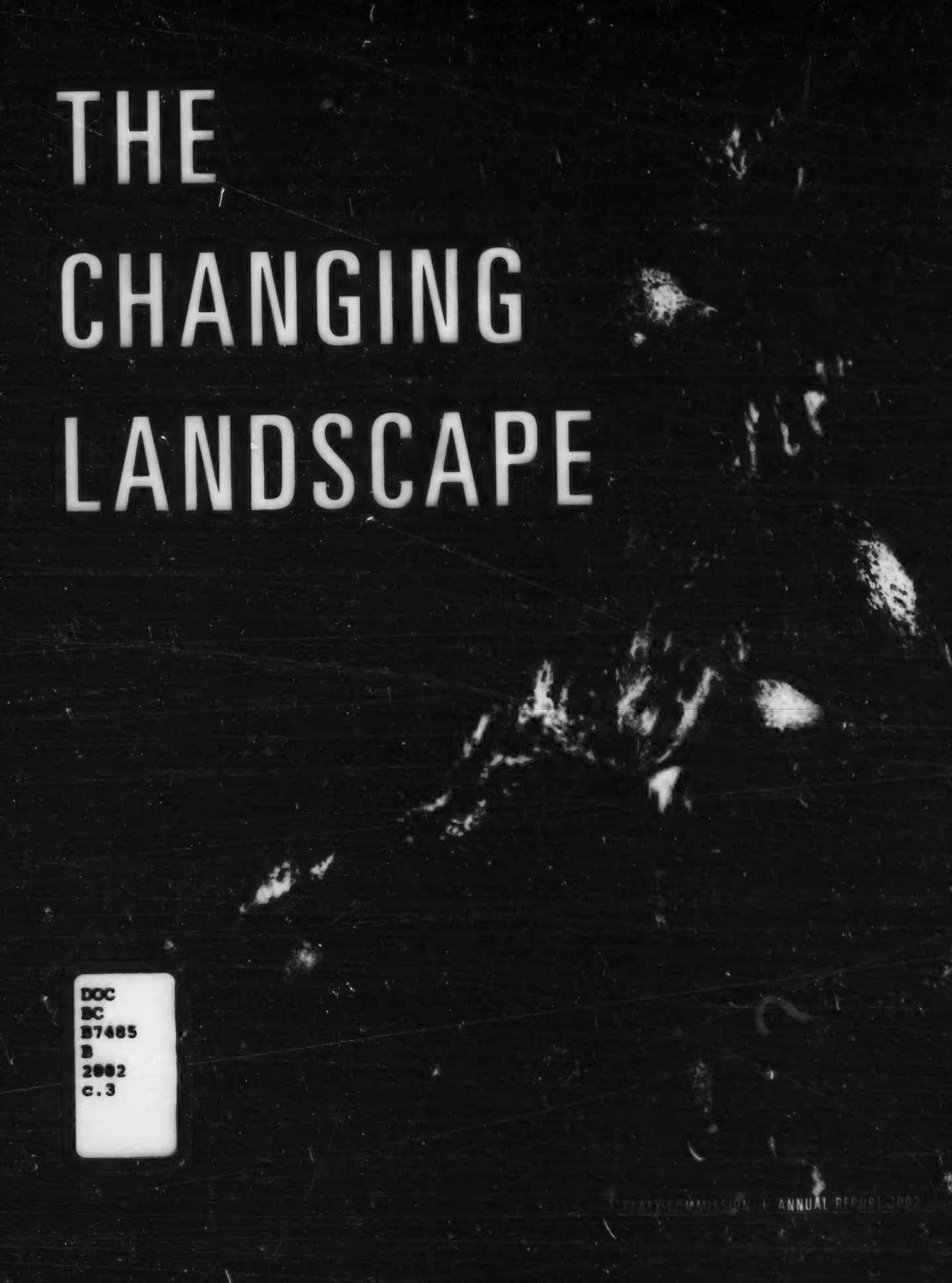
# THE CHANGING LANDSCAPE



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"... a variety of creative paths to a treaty."

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# LETTER FROM THE CHIEF COMMISSIONER

Negotiations, after disruption and delay, have resumed. And we are encouraged by the fact earlier restrictions on the issues for negotiation have been lifted and that new, more flexible and creative options have been explored.

The recommendations in our last annual report inspired an intensive re-examination of the treaty process. Tripartite talks have produced a report made public in May pointing the way to more effective treaty negotiations with earlier achievement of incremental and other agreements. All parties are to be commended on their unprecedented commitment of time and energy to this re-examination.

It is now up to senior ministers and the First Nations' leadership to make the crucial decisions on next steps when they meet this fall. The challenges and obstacles to progress have been examined and re-examined. Options to move negotiations forward have been set out. It is now time to convert political will into action. Expectations are extremely high that leaders will deliver long-awaited options to negotiators – options that are necessary for negotiations to succeed.

It will be the Treaty Commission's job to ensure that these options come to fruition. At the same time, the Treaty Commission must see that the treaty process remains voluntary and open to any First Nation that wants to negotiate a new relationship. This will require sufficient human and financial resources for negotiations for all parties.

It is remarkable that after all the challenges the treaty process has faced, negotiation continues to be seen by so many as the preferred way to resolve their issues. Recent legal decisions lend a sense of urgency to treaty negotiations and provide additional compelling reasons to negotiate agreements now.

The price will be high if we fail to build on the progress of the past year. Failure to resolve land and governance issues, in the past, has been a cost borne primarily by First Nations. Our failure now will be a higher cost borne by all British Columbians.

I am grateful to commissioners and staff for their tireless efforts and commitment through an extraordinarily challenging year. I am especially proud of the provincial and national recognition we have received for our 2001 annual report.

I was pleased to welcome Jack Weisgerber as a commissioner. His commitment to reconciliation is longstanding: as BC's first aboriginal affairs minister, he was party to the tripartite decision made to create a made-in-BC treaty process.

The Treaty Commission is required to submit annually to the Parliament of Canada, the Legislative Assembly of British Columbia and the First Nations Summit a report on the progress of negotiations and an evaluation of the process. Our annual financial information has been prepared to coincide with the release of Annual Report 2002 and is submitted as a separate document.

Respectfully,

**Miles G. Richardson**

Chief Commissioner

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# BUILDING COMPREHENSIVE TREATIES INCREMENTALLY



A major review of the treaty process by the Treaty Commission last year revealed urgent action is necessary to make the treaty process more effective. As a result of its review, the Treaty Commission suggests treaties are best built over time. In this way, when a final treaty is signed the new relationships necessary for success will largely be in place.

The Treaty Commission's recommendations for building treaties incrementally set in motion an intensive re-examination of the treaty process by senior representatives of the First Nations Summit and the governments of Canada and BC. This work continues.

From the Treaty Commission's perspective, building comprehensive treaties incrementally can offer a variety of creative paths to a treaty and provides benefits sooner to all parties in the negotiations. It is not intended to replace the comprehensive approach to treaty making currently being pursued by many First Nations in the treaty process. Where a comprehensive treaty is within reach the incremental approach is less likely to be pursued.

The Treaty Commission's recommendation to build treaties incrementally was intended to give fresh impetus to the ideas envisioned by the creators of the treaty process.

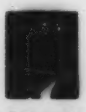
> ***Early implementation of sub-agreements may provide the parties with an opportunity to demonstrate good faith, build trust and establish a constructive relationship.***
> BC Claims Task Force Report

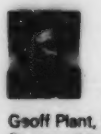
As the *BC Claims Task Force* anticipated, interim measures and other agreements that bring the parties closer to a new relationship, and that serve as the building blocks of comprehensive treaties, are a key means by which the parties can build treaties incrementally.

**Treaty Process Re-examined**

An insight into the re-examination of the treaty process that Canada, BC and the First Nations Summit have engaged in over the past year can be gained from the report, *Improving the Treaty Process* at www.bctreaty.net. This report is a wide-ranging and thoughtful examination of options for moving forward and addressing the barriers in the path of progress. It was prepared by senior officials and endorsed by the ministers for the governments of Canada and BC and task group members for the First Nations Summit – the Principals. The ideas in the report could fundamentally change aspects of the treaty process while continuing to embody the original principles. The report includes an ambitious work schedule for senior officials to address the parties' concerns, bridge the gaps in vision and find solutions by this fall through continuing high level talks.

Two working groups involving senior officials from First Nations, the governments of Canada and BC and the Treaty Commission are continuing to address major issues seen as obstacles to progress. A third working group has considered changes to the treaty process that will be needed to make an incremental approach work.





**The Principals** | Robert Nault, Minister Indian and Northern Affairs

Geoff Plant, Minister Responsible for Treaty Negotiations

## Prospects for agreements

### High Level Talks

The Treaty Commission believes there are significant opportunities for progress. In crucial measure, though, progress in the treaty process depends on the success of continuing high level talks involving the political leaders for governments of Canada and BC and the First Nations Summit. It is largely at this level that agreement will be reached on the recommendations initiated by the Treaty Commission and being developed by senior officials.

High level talks are expected to deliver new ways to address the obstacles that have prevented agreements. For the first time, early access to land, resources and other economic measures, land protection, compensation, revenue sharing and cooperative management are being discussed. Also under discussion are new approaches to certainty and the need to make sure that provincial line ministries and federal departments are in lock step with their negotiation teams to ensure agreements reached lead to action on the ground.

Where the parameters for negotiations were once seen as too narrow, there now appears to be a willingness to discuss any issue viewed as significant to the new relationship being sought through treaties.

Individual tables have deferred resolution of key issues in the hope that new options will emerge from high level talks. Many tables are unlikely to make significant progress until the political leaders reach agreement or an understanding on the major unresolved issues.

### Canada and BC

The governments of Canada and BC have confirmed support for the ideas embodied by the recommendations put forth in the Treaty Commission review of the treaty process. As noted above, their senior officials continue to work with the First Nations Summit to work out the details.

At the invitation of Indian and Northern Affairs Minister Robert Nault, political leaders met informally in July to candidly share their views on the state of treaty negotiations. It was a start, but much more interaction will be required to build trust and move negotiations forward.

Minister Nault has said previously that if there is an opportunity to test-drive some of the new ideas – before the final agreement is constitutionally locked in – it can only build confidence. His government also recognizes the inherent right of self government and maintains its commitment to negotiate this form of governance with First Nations through the BC treaty process.

The BC government is to be applauded for marshalling its negotiating resources into a separate Treaty Negotiation Office and for meeting regularly with First Nation leaders to build a new relationship. Minister Responsible for Treaty Negotiations, Geoff Plant, has given new instructions to negotiators for British Columbia.

Plant's instructions, made public in early August, state, "We must recognize that this is a negotiation among three parties and as such, some measure of compromise is inevitable. British Columbians have given government a strong mandate to move forward with a clear set of principles and you are to be guided by these principles. We will be held to account for our adherence to them but we have been consistent in stating that we cannot guarantee outcomes.

"During your negotiations and discussions, keep in sight opportunities to advance practical agreements such as interim measures, in subject areas that benefit First Nations. I want to reiterate government's desire to see substantial progress at treaty tables in the near term and to accelerate negotiations where agreements can be reached."

Edward John Herb George Lydia Hwitsum
First Nations Summit Task Group Members

Plant said he is committed to taking the results from high level talks to his cabinet colleagues for review and decision, at which time negotiators will receive additional instructions.

**First Nations Summit**



Following the referendum, the First Nations Summit reaffirmed its commitment to negotiations. In recent statements, the Summit has reminded British Columbians that the Supreme Court of Canada, as well as the BC Court of Appeal, have made it clear that the process of negotiations is about reconciling the pre-existence of aboriginal governments, aboriginal legal systems and aboriginal societies, with the assertion of Crown sovereignty.

The Summit has reiterated its belief that the source of First Nation governance authority stems from their inherent right to self government. Also, the Summit has consistently maintained that revenue sharing, cooperative management within First Nations' traditional territory and compensation are critical to treaty making.

**Individual tables**

Individual treaty tables, too, have taken a positive approach. Some tables will continue negotiations as before and are encouraged to do so. Others are exploring ways to build treaties incrementally, for example, by concluding land protection, fish or forest agreements as building blocks for a treaty. Building treaties incrementally, with flexibility in approach at individual tables, would also allow communities within a First Nation more options for setting their own priorities and moving at their own pace.

The strategic and creative use of existing negotiation tools, for example interim measures agreements, will continue to be important. In addition, new types of incremental agreements are being contemplated, ranging from community-based agreements to regional and sectoral agreements. It is expected the incremental approach will result in many smaller agreements that become the building blocks for a comprehensive treaty.

As stated in the last annual report, each First Nation is autonomous and each negotiation stands alone. But time and money are not well spent in trying to craft individual approaches when it is clear there will be certain elements fundamental to the parties that will be common to all treaties.

**Resources for high level talks**

There continues to be an imbalance of resources between the First Nations Summit and the two governments that must be addressed. The governments of Canada and BC have the resources of various government departments to advise and provide analyses on any new options. The First Nations Summit has very limited resources to consult with 53 First Nations and provide advice and analyses. The Summit will require additional human and financial resources in order to be effective in these high level talks, but the governments of Canada and BC hold the purse strings.

**Fiscal Relations Working Group**

Established two years ago, the Fiscal Relations Working Group comprises representatives of Canada, BC and the Summit. It serves as an example of what can be achieved on a coordinated basis. Over the past year it has undertaken highly technical work that will result in a series of options being available to First Nations early in 2003. The information, which can be used to help individual negotiation tables, covers such matters as potential revenue sources and taxing authorities.

**1763** | Royal Proclamation decrees that Indian peoples should not be disturbed in their use and enjoyment of the land.

**Time for reality check**

The Treaty Commission last year recommended the governments of Canada and BC provide "time out" funding to allow First Nations to develop their human resources, governance and treaty vision without accumulating further debt and without the continuing pressure of supporting tripartite negotiations.

A "time out" would also allow First Nations an opportunity to consider the results of high level talks on fundamental issues and consult their constituents on the results.

The task now for senior officials is to ensure that those new options that have been discussed are given effect. Those options must meet the needs of all parties. Examples of new options are First Nations continuing negotiations as before, taking an incremental approach using new tools, taking a "time out", or taking stock.

Senior officials are recommending the parties in each negotiation take stock of where they are by assessing their prospects for agreement. A formal assessment would assist the parties in identifying areas of agreement and disagreement and determine how close the parties are to achieving a treaty. As well, the assessment would be the starting point for a results-based work plan for each negotiation table.

Each table would develop a tripartite work plan with defined goals and milestones, based on their assessment, to guide negotiations. As well, work plans would provide the necessary accountability to each parties' constituents for results or the lack of results as negotiations move forward. If the Principals accept the recommendations at their next scheduled meeting this fall, it is expected that the Treaty Commission would monitor and report on each parties' progress in carrying out their work plan.

First Nations see assessments as a tool the governments of Canada and BC could use to remove them from active negotiations. Given the Canadian government's position to no longer dedicate resources to negotiation tables that it perceives not making progress and the BC government's decision to assign chief negotiators to only 14 tables, First Nations have cause for concern.

The Treaty Commission believes that in considering any options, it is crucial that the treaty process remains voluntary and that the governments of Canada and BC provide sufficient resources for negotiations with all First Nations that want to actively negotiate a new relationship.

**1850s** | James Douglas, of the Hudson's Bay Company and then as governor of the Crown colony of Vancouver Island, arranges 14 treaties on Vancouver Island.

# FIRST NATIONS IN THE TREATY PROCESS



There are now 53 First Nations participating in the BC treaty process, representing 122 *Indian Act* bands (114 in B.C. and eight in the Yukon) and two-thirds of all aboriginal people in B.C. Because some First Nations negotiate at a common table, there are 42 sets of negotiations underway. The treaty process is voluntary and open to all First Nations in BC.

There are 42 First Nations (34 treaty tables) in Stage 4 agreement-in-principle negotiations and one First Nation in Stage 5 negotiations to finalize a treaty.

**6 First Nations in Stage 2**

- Acho Dene Koe First Nation
- Council of the Haida Nation
- Hupacasath First Nation
- In SHUCK-ch Council
- Liard First Nation (Kaska Nation)
- Ross River Dena Council (Kaska Nation)

**4 First Nations in Stage 3**

- Cheslatta Carrier Nation
- Musqueam Nation
- Squamish Nation
- Quatsino First Nation (Winalagalis Treaty Group)

**42 First Nations in Stage 4**

- Ditidaht First Nation and
- Pacheedaht Band
- Cariboo Tribal Council
- Carrier Sekani Tribal Council
- Esketemc First Nation
- Gitanyow Hereditary Chiefs
- Gitxsan Hereditary Chiefs
- Haisla Nation
- Heiltsuk Nation
- Homalco Indian Band
- Hul'qumi'num Treaty Group
- Kaska Dena Council (Kaska Nation)
- Katzie Indian Band
- Klahoose Indian Band
- Ktunaxa/Kinbasket Treaty Council
- Laich-Kwil-Tach K'omoks Tlowitsis Council of Chiefs
- Lake Babine Nation
- Lheidli T'enneh Band
- Nazko Indian Band

Northern Regional Negotiation Table Members

- Carcross / Tagish First Nation
- Champagne and Aishihik First Nations
- Taku River Tlingit First Nation
- Teslin Tlingit Council

- Nuu-chah-nulth Tribal Council
- Oweekeno Nation
- Sliammon Indian Band
- Snuneymuxw First Nation
- Sto:Lo Nation
- Te'Mexw Treaty Association
- Tsawwassen First Nation
- Tsay Keh Dene Band
- Tsimshian Nation
- Tsleil-Waututh Nation
- Westbank First Nation
- Wet'suwet'en Nation

Winalagalis Treaty Group Members

- Kwakiutl Nation
- 'Namgis Nation
- Da'naxda'xw Awaetlatla Nation
- Gwa'Sala-'Nakwaxda'xw Nation
- Tlatlasikwala Nation

- Yale First Nation
- Yekooche Nation

**1 First Nation in Stage 5**

- Sechelt Indian Band

**1876** | Canada's Parliament passes the *Indian Act* to regulate most aspects of aboriginal peoples' lives.

# THE YEAR IN NEGOTIATIONS

Individual treaty tables struggled to sustain momentum this year as the BC government set aside critical negotiation topics, including self government, until after the results of the province-wide referendum were released. Substantive negotiations were disrupted at most treaty tables during this period, as they were earlier during both the federal and provincial elections: many tables met infrequently, some did not meet at all. However, discussions continued on interim measures agreements and on moving forward previous agreements on substantive issues.

In August 2002, BC issued its instructions to negotiators and dedicated resources to reach agreements within the coming year. Significantly, BC has agreed to explore, with the First Nations Summit and the Government of Canada, compensation, revenue sharing and cooperative management rights within First Nations' traditional territories. Momentum is building at several treaty tables and options developed through high level talks are expected to help address common challenges that have impeded progress.

## Progress in Agreement-in-Principle Negotiations

The following report highlights several negotiation tables where significant progress has been made over the past year as assessed by the Treaty Commission.

**Gitanyow Hereditary Chiefs** – In August, the parties at the Gitanyow table initialed several substantially complete chapters of an agreement in principle: Parks and Protected Areas, Ratification, Eligibility and Enrollment, Fisheries, Wildlife and Culture and Heritage Resources. In addition, the parties initialed a governance framework, which describes how traditional, hereditary governance systems will be integrated with a modern governance system and how Gitanyow will administer governance arrangements negotiated through a treaty.

Gitanyow is based in Kitwanga with traditional territory extending north to Bowser Lake and including the middle reaches of the Nass River.

**Sliammon Indian Band** – The parties at the Sliammon table initialed an agreement in principle in February 2001, which included $24.1 million, 5,000 hectares of Crown land, self government provisions and a 12-year elimination period for income tax exemptions. Subsequently, the agreement failed a ratification vote by Sliammon members.

This year, the Sliammon table spent considerable time identifying and addressing the issues that concern constituents. Based on this analysis, negotiators have resumed agreement-in-principle negotiations.

A land protection agreement, renewed by the Sliammon table in 2002, sets aside 5,000 hectares of Crown land for potential inclusion in a treaty settlement. The agreement effectively protects from development the area being considered as Sliammon's potential treaty settlement land.

Sliammon has traditional territory around Powell River, the Gulf Islands, Courtenay and Desolation Sound.

**1880** | Government begins to remove aboriginal children from their families, placing them in residential schools.

**Snuneymuxw First Nation** – In February 2001 the parties to the Snuneymuxw table released a draft agreement in principle for consultation purposes. As part of the agreement, the table had identified parcels of private land, available from a willing seller, to be included as part of potential treaty settlement land. Local government, in particular the City of Nanaimo and Gabriola Island residents, strongly opposed private property being included in the draft agreement. Responding to local concerns, the former BC government did not table an anticipated land and cash offer and momentum at the treaty table was lost.

The new BC government has resumed negotiations with Snuneymuxw and negotiations are continuing at an intense pace. As a measure of this commitment, the parties agreed to set aside several parcels of land on Gabriola Island, known as the Kensington lands, comprising 1100 acres for potential inclusion in an eventual treaty settlement.

The table has also made significant progress in its relations with local government and in August completed a *Legislation Working Group Report* outlining elements of a relationship between Snuneymuxw and the Regional District of Nanaimo and their implications for an agreement in principle. The First Nation and Canada are addressing public concerns through a joint public information initiative.

Snuneymuxw's traditional territory ranges from the east coast of Vancouver Island – including Gabriola Island, Mudge Island and other adjacent islands – to the Nanaimo River watershed.

**Yale First Nation** – Negotiations with Yale First Nation made a significant step forward this year when the parties agreed in July to set aside 181 hectares of land for inclusion in a potential treaty settlement. The land, located in the Hills Bar area, is important to Yale's cultural heritage, an important archaeological site and of significant economic value. Under the agreement, an existing mineral licence will be honoured but no new forestry, mining or land development licences will be issued. Discussions are now underway between Yale and the existing mineral tenure holder on a possible joint venture. The table continues to negotiate at an intense pace.

Yale's traditional territory encompasses the area around the Town of Yale, which is North of Hope.

**• For more information**

Please visit Resources at www.bctreaty.net for links to initialed and draft agreements in principle.

### In-SHUCK-ch Re-enters Negotiations

Following a period of reassessment stretching back to August 2001, In-SHUCK-ch communities Douglas, Samahquam and Skatin have re-entered the treaty process and resumed negotiations as In-SHUCK-ch Council.

In-SHUCK-ch/N'Quatqua entered the treaty process in March 1995. Following the joint land and cash offer made by the governments of Canada and BC in October 1999, the First Nation withdrew from active treaty negotiations to consider its options. N'Quat'qua eventually withdrew from the treaty process.

### Progress in Interim Measures Agreements

Last year, the Treaty Commission urged the principals to move away from the 'big bang' theory of treaty making and focus instead on building treaties incrementally over time. As outlined in the 1991 *Report of the BC Claims Task Force*, "treaty negotiations in British Columbia are likely to take some time. Therefore, the parties must balance their conflicting interests until these negotiations are concluded. One method is the use of interim measures agreements."

**1884** | Parliament outlaws the potlatch, the primary social, economic and political expression of some aboriginal cultures.

While substantive negotiations have been stalled over the past year, treaty tables have spent considerable time in interim measures discussions. Approximately 15 new interim measures agreements – including funding for governance research, economic development and land use planning – were signed between September 2001 and August 2002. To date, more than 75 interim measures agreements, including treaty-related measures, have been signed under the BC treaty process and several more are under active negotiation. The Treaty Commission continues to track implementation of these agreements and to urge the parties to negotiate more interim measures agreements, especially for land and resource protection, planning and management.

### New Interim Measures Agreements

#### Recent Tourism and Economic Development Agreements

**Gitxsan Hereditary Chiefs**, in cooperation with Wet'suwet'en Nation have a tourism development study underway.

**Homalco Indian Band**, Canada and BC will share the cost of an economic development study to assess fisheries and aquatic resource potential within Homalco's traditional territory.

**Katzie Indian Band** is using interim measures funding for an economic development study to include research on the general state of the economy within Katzie's traditional territory and 'best practices' for economic development. Katzie also plans to assess future employment and training opportunities for its members.

**Ktunaxa/Kinbasket Treaty Council** (KKTC) is using interim measures funding to develop a business plan for creating a lands and resources agency. The plan will address the land use priorities of KKTC people and training required to staff the agency with community members.

**Laich-Kwil-Tach K'omoks Tlowitsis Council of Chiefs** (LKTCC) has an agreement to evaluate shellfish aquaculture opportunities within their traditional territory.

**Winalagalis Treaty Group** signed an interim measures agreement which will allow the nation to identify tourism development opportunities and develop an implementation plan for marketing, product, human and capital development.

#### Governance Development Agreements

**Hul'qumi'num Treaty Group** has a funding agreement to pursue internal governance work and help build relationships with local governments.

**Laich-Kwil-Tach K'omoks Tlowitsis Council of Chiefs** (LKTCC) has an agreement to involve community members in building their governance vision. As part of the agreement, LKTCC is researching existing aboriginal governance models and their own traditional governance system and has conducted a governance workshop.

#### Land use agreements

**Cariboo Tribal Council** (CTC) Canada and BC signed an agreement enabling CTC to participate in land use planning and park management planning. The agreement promotes cooperation between CTC's land use planning work and the sub-regional land use planning process currently underway in CTC's traditional territory.

**1887** | Nisga'a and Tsimshian chiefs travel to Victoria to press for treaties and self government. They are turned away.

**Hul'qumi'num Treaty Group** (HTG) signed an agreement with Canada and BC that will help the nation to identify social, economic and cultural needs to support treaty settlement land selection. The agreement will also help HTG prepare to take part in land use planning.

**Northern Regional Negotiation Table** was provided funding by Canada and BC to help members Taku River Tlingit First Nation, Carcross Tagish First Nation and Teslin Tlingit Council identify land for treaty negotiations and explore land use options within their traditional territories.

**• For more information**

See the Treaty Commission's regular newsletter column "Interim Measures Watch" available on-line at www.bctreaty.net

### Economic Measures Fund

On April 23, BC announced a $30 million First Nations Economic Measures Fund – $10 million in each of the next three years – to promote First Nations involvement in areas such as forestry, oil and gas, tourism, aquaculture and the 2010 Olympic bid. The fund, available to First Nations inside and outside the treaty process, is expected to help conclude more interim measures agreements and to provide a greater degree of economic certainty for all British Columbians.

### General Protocol Agreement on Land Use Planning

In April 2001, Gitga'at First Nation, Haida Nation, Haisla Nation, Heiltsuk Nation, Kitasoo/Xaixais First Nation and Metlakatla First Nation signed the General Protocol Agreement with BC to promote First Nation involvement in provincial land use planning processes and to help conclude interim measures agreements.

Through the protocol framework, land and resource management planning processes, including the Central Coast Land and Resource Management Plan (LRMP), were endorsed by First Nations, forestry companies, community groups, environmentalists and truck loggers. As part of the process, BC has protected 441,256 hectares of Crown land ranging from Knight Inlet to Princess Royal Island – home of the Kermode Spirit Bear – and deferred logging on an additional 533,838 hectares. First Nations comprise more than half the population in the plan area.

The completion phase of the Central Coast LRMP is underway. In May 2002, BC issued 20 protection orders to prevent commercial fishery, mining and hydroelectric activities, while allowing development deemed to be eco-friendly and beneficial to local communities, such as tourism and traditional land uses among First Nations. The protected areas, effective to June 2003, fall within the traditional territories of Tsimshian, Heiltsuk, Oweekeno, Da'naxda'xw, Hamatla and Gwa'Sala-'Nakwaxda'wx traditional territories.

First Nations involvement in land use planning, as outlined in General Protocol Agreement, must be on a government-to-government level, including representation at decision-making forums. In April 2002, BC provided participating First Nations with funding to help them develop their own vision for land use, which will shape the outcome of provincial land use plans. Participating First Nations are also identifying potential economic development opportunities in the central coast area.

**1913** | The Nisga'a Nation petitions the British Privy Council to resolve the Land Question.

The Coast Sustainability Trust has been established to promote economic parity for communities, contractors and workers directly impacted by the protection areas and ecosystem-based management practices resulting from the completed land use plan.

Other land use planning processes underway include the *Haida Gwaii Land Use Plan, Xay Temixw* [Sacred Land] Land Use Plan (Squamish Nation), the Okeover Round Table and Theodosia Adaptive Water Management Planning Process (Sliammon Indian Band) and the *Cates Park/Whey-ah-Wichen Agreement* (District of North Vancouver and Tsleil Waututh Nation).

**Recommended Resources**

Central Coast Land Resource Management Plan – http://www.luco.gov.bc.ca/lrmp/cencoast/

Xay Temixw Land Use Plan
http://www.squamish.net/news/land_use/land.htm

Okeover Round Table and Theodosia Adaptive Water Management Planning Process
http://www.sliammontreaty.com/

**1927** | The Canadian government makes it illegal for aboriginal people to organize to discuss land claims.

# THE LEGAL LANDSCAPE



### Duty to consult exists pre-treaty

Two landmark rulings in the BC Court of Appeal confirm the provincial government must properly consult with and accommodate the interests of First Nations, pre-treaty, before proceeding with development on their traditional territory.

In February 2002, the BC Court of Appeal ruled unanimously that the provincial government (Crown) and Weyerhaeuser did not properly consult the Council of the Haida Nation when renewing a tree farm licence on Haida Gwaii (Queen Charlotte Islands). Tree Farm Licence 39, issued to Weyerhaeuser, contains several areas with old growth red cedar – a culturally significant tree used for totem poles, canoes and log houses. The Haida Nation wants large areas of old growth forests protected from clearcutting and its detrimental effects on land, watersheds, fish and wildlife.

The court held that "there is a reasonable possibility that the Haida will be able to establish aboriginal title to at least some parts of the coastal and inland areas of Haida Gwaii as well as an aboriginal right to harvest red cedar trees from the various old-growth forests on Haida Gwaii."

The duty to consult, deriving from the "trust-like" relationship between First Nations and the Crown, exists when a First Nation asserts title through entering the treaty process and continues until after a treaty is signed or aboriginal rights and title are defined through the courts. The extent of the duty depends on the strength of the First Nation's connection to the land. The court concluded the Haida would have a potentially strong legal claim to aboriginal rights and title.

In *Haida*, the court also held that the duty to consult exists upon third parties – in this case, Weyerhaeuser. This duty on the part of third parties to consult and accommodate was confirmed and elaborated by the BC Court of Appeal in August 2002.

The *Haida* decision followed a January 31, 2002 decision by the BC Court of Appeal in the Taku River Tlingit case. In this case, the court ruled that the province must consult the Taku River Tlingit First Nation before they re-issue a project permit to Redfern Resources to reopen the Tulsequah Chief Mine in Northwest B.C.

Taku River, like the Haida Nation, had environmental concerns about the proposed development. Reopening the mine would require the construction of a 160-kilometre access road through one of the largest unroaded watersheds in B.C.

Following the Court of Appeal decision, the Haida Nation filed a lawsuit in the Supreme Court of British Columbia to establish land title to the islands of Haida Gwaii and title to the surrounding waters. The Haida Nation wants to protect the waters surrounding Haida Gwaii from offshore oil drilling. The lawsuit, launched March 6, is one of the first aboriginal title lawsuits since the *Delgamuukw* case.

### The duty to consult: A history

In 1888, the Judicial Committee of the Privy Council in London, England held in the *St. Catherine's Milling* case that provinces could not use aboriginal title lands "as a source of revenue [until] the estate of the Crown

**1931** | The Native Brotherhood of BC forms to secretly discuss land claims.

is disencumbered of aboriginal title." For more than a century, the province of British Columbia maintained that there was no aboriginal title in the province or that it had already been extinguished. The Supreme Court of Canada's decision in the 1997 *Delgamuukw* case confirmed that aboriginal title exists in BC, that it is a right to the land itself – not just the right to hunt, fish and gather – and that when dealing with Crown land, the government must consult with and may have to compensate First Nations whose rights are affected.

**Impact on negotiations**

The rulings in *Taku* and *Haida* call into question the policy of both governments to suspend treaty negotiations with a First Nation that is pursuing aboriginal rights related litigation. Given court rulings that suggest there may be a duty to consult once a First Nation submits a statement of intent to enter the treaty process and a supervisory role for the courts, the Haida case may undermine government policy not to negotiate once a First Nation initiates litigation.

The court made it clear that interim processes, either through the courts or negotiated agreements, can temporarily reconcile competing interests until there is final reconciliation through a treaty or decision at trial. This reaffirms the *Report of the BC Claims Task Force*, which stated in 1991 that "to protect interests prior to the beginning of negotiations, the federal and provincial governments must provide notice to First Nations of proposed developments in their traditional territories and, where required, initiate negotiations for an interim measures agreement."

The Treaty Commission continues to urge the parties to negotiate consultation agreements and interim measures agreements that protect land that will be included in a potential treaty settlement. Hul'qumi'num Treaty Group, Sliammon Indian Band and Yale First Nation already have land protection agreements underway.

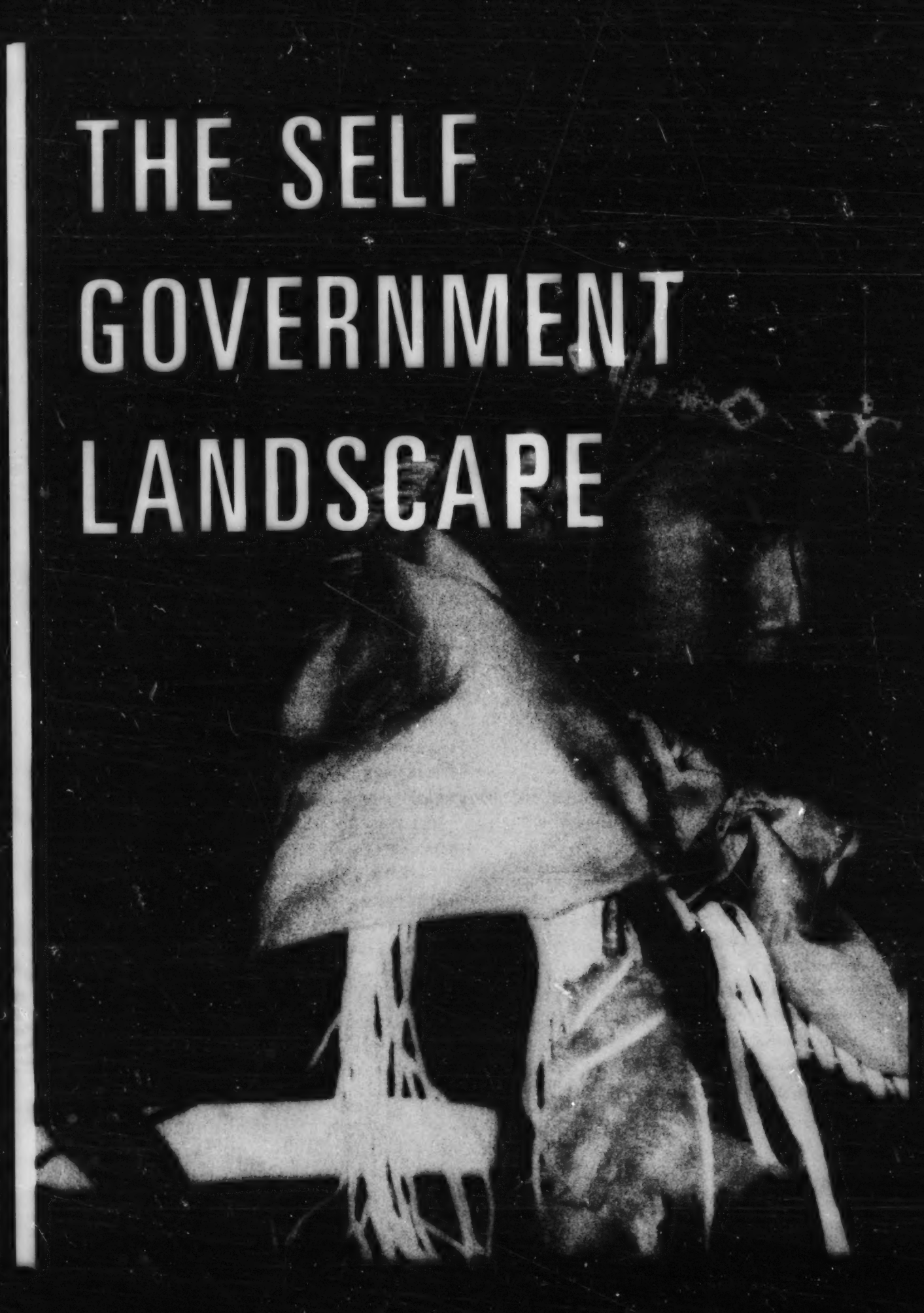
The Treaty Commission has consistently maintained that treaty negotiations are the most practical and constructive means to resolve aboriginal rights and title. Litigation is costly, generally narrowly focused, time consuming and ultimately leaves the question of how aboriginal rights and title apply unanswered. However, litigation can provide useful direction on important questions that impact all negotiation tables.

For example, the *Delgamuukw* case – a major turning point for the treaty process – provided clear and strong statements affirming aboriginal title. However, *Delgamuukw* did not resolve aboriginal title for the First Nations involved as the court decided a new trial was required. *Delgamuukw* was in the courts for 13 years.

Two-thirds of all First Nations people in BC have voluntarily chosen to negotiate resolution of aboriginal rights and title through a treaty.

**1951** | Responding to international human rights criticism, the Canadian government amends the *Indian Act* to remove anti-potlatch and anti-land claims provisions.

# THE SELF GOVERNMENT LANDSCAPE



# WHY SELF GOVERNMENT?

*This article was written by the Treaty Commission with the participation of University of Northern British Columbia Professor Greg Poelzer, whose paper Inherent vs. Delegated Models of Governance, as well as several other papers on self government, is available at www.bctreaty.net*

## Purpose

First Nations were self-governing long before Europeans arrived in Canada. In 1876, the *Indian Act* came into effect, undermining traditional governance systems and imposing regulations on aboriginal peoples' lives that, to a lesser extent, continue to this day. First Nations, for more than 100 years, have demanded the right to govern themselves according to their own traditions – to be free of the *Indian Act.*

Aboriginal rights and treaty rights, both existing and those that may be acquired, are recognized and affirmed in Section 35 of the *Constitution Act, 1982.* However the full scope of First Nation governance powers, potentially recognized and protected by the constitution, remains unresolved by the courts. Consequently, the obligations, rights and responsibilities of the governments of Canada, BC and First Nations with regard to law-making remain unclear.

We can continue to resolve the scope of First Nation governance powers through the courts, on a case-by-case basis, or we can do so through treaty negotiations. A negotiated resolution, which takes into account the interests of all of the parties, rather than a solution imposed by the courts, is obviously the preferred approach.

The act of treaty making gives recognition to First Nations on their traditional territories as legitimate governments representing the interests of their constituents. Treaty negotiations afford us a unique opportunity to clarify the obligations, rights and responsibilities of each government and establish a new relationship among First Nations and the governments of Canada and BC.

After treaties, First Nations will have agreed ownership and jurisdiction over portions of their traditional territories and the resources within them. Self government is the principal means by which First Nations formalize their relationship to those lands and resources today and preserve their traditions, language and culture. First Nations will once again have the autonomy to make decisions about their lives and their futures.

Under the BC treaty process, it is intended that each First Nation has the opportunity to negotiate a self government arrangement to meet its unique social, cultural, political and economic needs.

The BC Claims Task Force, established in 1991 to make recommendations for a made-in-BC treaty process, envisioned that the self government arrangements within the treaty would have constitutional protection. Constitutionally protected self government, as in the Nisga'a treaty, is passed as Canadian law. Constitutional protection ensures that self-governing powers established by the treaty would be very difficult to take away.

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### Approaches Vary

Self government for First Nations in British Columbia and in other parts of Canada has taken and will take, many forms.

The *Nisga'a Final Agreement* is the first modern comprehensive treaty with constitutional protection. Amendment requires the agreement of all three parties – the treaty cannot be revoked unilaterally. It clearly spells out the continuing obligations, rights and responsibilities of each of the governments to the agreement.

The agreement sets out all areas where Nisga'a government can make laws. There are 14 areas in which Nisga'a laws prevail on Nisga'a lands and for Nisga'a citizens. Eight of these areas have little consequence for non-Nisga'a citizens, including, among other things, some Nisga'a government institutions, citizenship, culture and language and the licensing of aboriginal healers. Nisga'a laws prevail in six other areas of jurisdiction which have implications for non-Nisga'a citizens and neighbouring communities. These include, for example, education and forestry. Although Nisga'a laws prevail in these areas, the laws must meet or exceed federal and/or provincial standards. In other words, Nisga'a jurisdiction is qualified to ensure harmony with the laws of Canada and British Columbia.

The *Sechelt Indian Band Self-Government Act* (1986) and the Westbank First Nation Self-Government Agreement (1998), which has not been ratified, differ from the *Nisga'a Final Agreement.* In both cases self government authority is delegated from the federal and/or provincial governments.

Sechelt self government is the result of negotiations among the three governments and the federal and provincial governments passing legislation to create Sechelt government. Through an agreement in principle reached at the treay table in 1999, Sechelt sought to leave its 16-year-old self government arrangement in place.

Westbank self government takes its form from an agreement between the First Nation and the Government of Canada, but is explicitly not a treaty. The Westbank self government agreement represents an interim or incremental approach to self government while treaty negotiations are continuing with the governments of Canada and BC. An interim or incremental approach allows a First Nation to gain some self government powers now in order to achieve community goals and build further capacity for self reliance.

Although Westbank self government does not have constitutional protection, the proposed agreement with Canada cannot be changed without the consent of both parties.

### Scope of Governance Negotiations

While governance provisions are being actively negotiated at some treaty tables, no self government arrangements have yet been concluded under the BC treaty process. Governance negotiations typically address First Nation law-making powers, their source of authority and harmonization with the laws of Canada and British Columbia.

The Principals have agreed to consider incremental governance arrangements that would serve as building blocks for a final self government agreement. In this way, through interim measures agreements, the parties in individual negotiations can test governance arrangements before they are finalized through treaty negotiations.

### Self Government Powers

Specific law-making powers to be exercised by First Nations will vary from treaty to treaty as each First Nation is likely to negotiate self government arrangements that meet its unique social, cultural, political and economic needs.

While specific First Nation law-making powers are a matter for negotiation, the parties have made some assumptions around their potential scope. For example, it is anticipated that self government will be exercised within the existing Canadian constitution. Therefore, aboriginal peoples would continue to be citizens of Canada and the province or territory where they live, but may exercise varying degrees of jurisdiction and/or authority. Also, it is anticipated the *Charter of Rights and Freedoms* and the *Criminal Code of Canada* would apply and that First Nations would consult with non-aboriginal residents on decisions that directly affect them, for example, health, school and police boards.

**Source of Authority**

The source of authority for First Nation law-making powers is an issue the parties are endeavoring to resolve through treaty negotiations.

First Nations assert their right to govern themselves is an inherent aboriginal right protected by the constitution – the right is not given or delegated, but is based on their existence as organized societies in this country for thousands of year.

The Government of Canada recognizes that aboriginal people have an inherent, constitutionally protected right to self government – a right to manage their own affairs. The BC Government has indicated a desire to negotiate a delegated form of self government.

First Nations currently exercise a variety of law-making powers. For example, the inherent right is the source of authority for First Nation law-making in matters relating to customary marriages and adoption. First Nations also enact laws under authority delegated to band governments by the federal government under the *Indian Act*, or by federal or provincial legislation as is the case with Sechelt and in the proposed Westbank First Nation Self Government Agreement.

However, the *Indian Act* is not intended to define the nature and scope of any right of self government. On the contrary, the limited range of powers that band governments are authorized to exercise under the *Indian Act* do not adequately equip First Nation governments with the tools necessary to develop effective governing institutions and resolve the social and economic problems facing many First Nation communities.

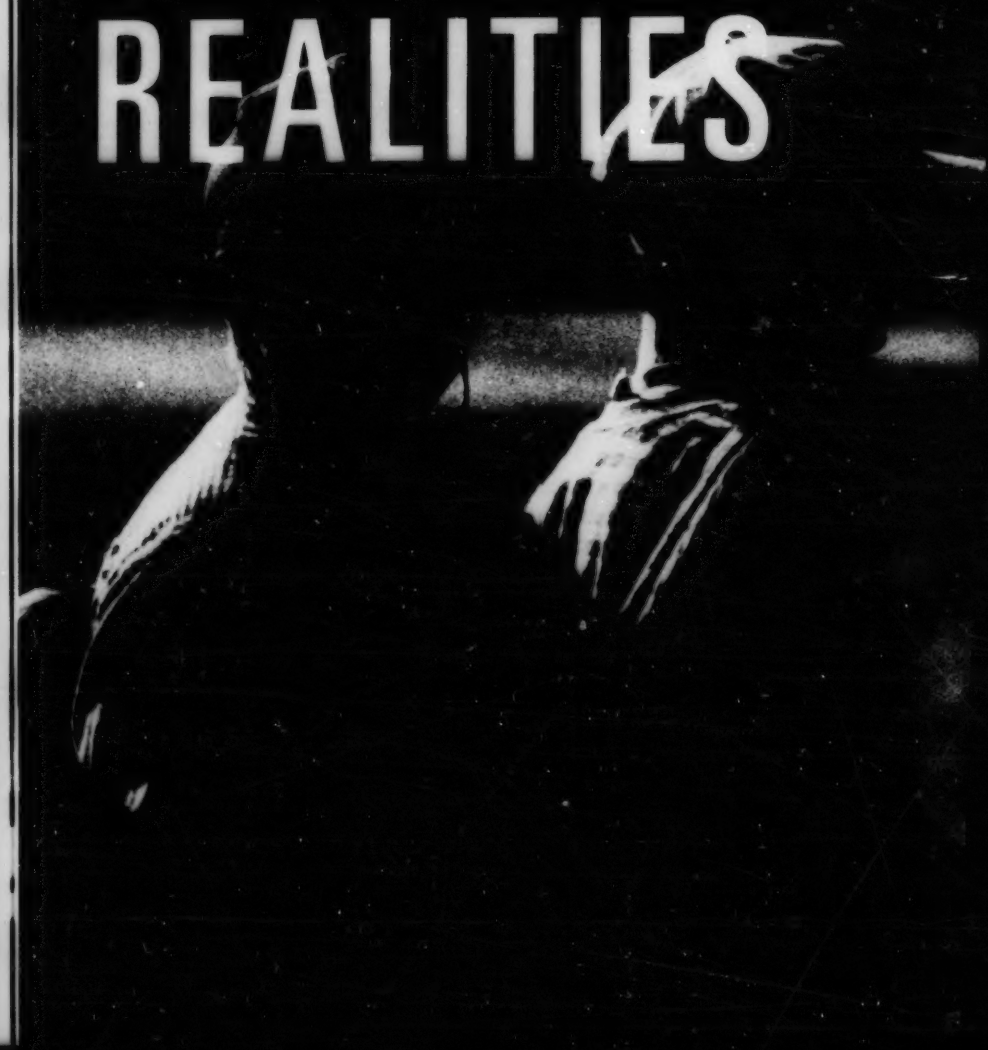
**Harmonization of Laws**

Federal, provincial and aboriginal laws must work in harmony, particularly where governments share law-making authority. For example, under the Nisga'a treaty, the Nisga'a and the provincial government share jurisdiction over wildlife. The Nisga'a treaty contains provisions that set out the respective roles and responsibilities of each government and define which laws will prevail in the event of a conflict.

**"First Nation government, often referred to as self government, will be an essential component of a new relationship."**

BC Claims Task Force Report

# SELF GOVERNMENT: THE FIVE REALITIES



# 1 HISTORICAL REALITY

Prior to European settlement, aboriginal people were living in communities as distinct and self-sufficient nations. Each nation had its own language, its own system of law and government and its own territory.

When British Columbia joined Canada in 1871, aboriginal people, who were the majority, had no recognized role in political decision-making. The Terms of Union made no mention of aboriginal title to land.

The Government of Canada assumed responsibility for "Indians and lands reserved for Indians." The Government of British Columbia retained control over the creation of further Indian reserves and considered the "Indian land question" to have been resolved.

Aboriginal people could not vote provincially until 1949 and federally until 1960 or stand for election and they could not pursue their claims in court. The federal and provincial governments would not address the land question or force the matter into the courts.

First Nations were subjected to federal control under the constraints of the *Indian Act*. The "band" system of administration was imposed and federal officials made bands subject to detailed supervision that, to a lesser extent, continues to this day.

In spite of these policies, the traditional values, identities, institutions and allegiances of the aboriginal peoples endured. In their communities and among their councils there is the profound conviction that their aboriginal title and their inherent aboriginal right to govern themselves remains in effect, that no treaty or other lawful action has extinguished that title or their right to self government. First Nations see aboriginal title as an historical, lawful claim to whole traditional territories amounting to ownership.

Indian reserves currently cover approximately 0.4 per cent of the British Columbia land base, which represents only a small portion of the land First Nations traditionally occupied and used.

**"Justice Williamson, however, ruled not only that a limited form of self government survived confederation and was confirmed by s.35, but that the Nisga'a treaty properly and legitimately gave that limited right definition and content."**

Hamar Foster, University of Victoria professor, speaking at a Treaty Commission conference in March 2002.

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# 2 LEGAL REALITY



Under section 35 of the *Constitution Act, 1982*, aboriginal rights and treaty rights, both existing and those that may be acquired, are recognized and affirmed.

In *Calder (1973)*, the Supreme Court of Canada ruled that if there is an aboriginal historical presence on the land, aboriginal title could be recognized at common law – without the need for any action by the provincial or federal governments.

The recognition of aboriginal title in *Calder* as a legal right was sufficient to cause the federal government to establish a comprehensive land claims process.

In *Sparrow (1990)*, the Supreme Court ruled that unless legislation had a "clear and plain intention" to extinguish aboriginal rights, it did not have that effect, so those rights are continuing. After 1982, aboriginal rights and title were further protected from extinguishment by Canada's constitution.

In *Delgamuukw (1997)*, the Supreme Court decision confirmed that aboriginal title exists in British Columbia, that it's a right to the land itself – not just the right to hunt, fish or gather – and that when dealing with Crown land, the government must consult with and may have to compensate First Nations whose rights may be affected.

In *Campbell (2001)*, the BC Supreme Court ruled self government is an aboriginal right. The legal argument that all power in Canada is held by the federal or provincial governments was rejected by Justice Paul Williamson.

The BC Liberal Party, then in opposition, challenged the Nisga'a Final Agreement arguing the treaty violates the constitution by setting up a Nisga'a government with sweeping powers that are legally reserved for the federal and provincial governments.

The court was asked to decide whether the Nisga'a treaty created a new order of government so as to require an amendment of Canada's constitution. Sections 91 and 92 of the *British North America Act*, it was argued, divide all law-making power between the federal and provincial governments.

The court said the aboriginal right to self government was one of the underlying values of the constitution that remained outside the powers that were distributed to parliament and the provincial legislatures in 1867.

**"We can't put those (aboriginal) rights or title on hold while we negotiate treaties. The rights and title exist now as obligations and responsibilities that lie upon both the provincial and federal governments."**

Geoff Plant, Attorney General and Minister Responsible for Treaty Negotiations, speaking at an open Cabinet meeting in October 2001

# 3 POLITICAL REALITY

In 1990, there was both a political need and an appetite for beginning treaty negotiations with First Nations.

Direct action by First Nations was prominent throughout the 1970s and 1980s, with sit-ins, blockades and rallies. In the 1980s these actions were aimed at asserting aboriginal title and halting specific resource development projects.

The province's refusal to participate in negotiations was beginning to tell. Direct action and court rulings had delayed resource development projects pending the outcome of disputes over aboriginal rights and title. Economic activity was disrupted and investment in the province was down. Price Waterhouse calculated the cost to British Columbia of not settling land claims to be $1 billion in lost investment and 1,500 jobs a year in the mining and forestry sectors alone.

As a result, the BC government made the decision to join First Nations and Canada in resolving long-standing issues through negotiations. Then in 1991, First Nations and the governments of Canada and British Columbia agreed to a made-in-BC treaty process for resolving the dispute over title to land in this province. A task force made 19 recommendations for creating a BC treaty process. Its report said, "First Nation government, often referred to as self government, will be an essential component of a new relationship."

The Government of Canada in 1995 announced its policy to implement the inherent right to aboriginal self government, paving the way for self government negotiations to occur across Canada. The goal is an end to the *Indian Act* in favour of First Nation governance.

Minister Nault reiterated Canada's position in July 2002 saying, "Our position has been very clear. It won't change. We don't believe that municipal style type government for First Nations is on. We've been down that road many years ago; it has not been effective, nor will it work."

**"We can't wait – and the younger generation of First Nations peoples will not wait – for inherent rights to mean more than words on a page."**

Robert Nault, Minister of Indian and Northern Affairs, speaking at a Treaty Commission conference in March 2002

# 4 ECONOMIC REALITY



A 13-year study of indigenous nations in the United States has found economic success is closely linked to the power to make decisions.

Dr. Stephen Cornell, co-author of the Harvard Project on American Indian Economic Development, says their projects research has yet to find a single case in the United States of sustained economic activity on indigenous lands in which a government body other than the indigenous nation itself makes the decisions about government structure, natural resource use, internal civil affairs and development strategies.

The economic research has found four critical factors for success:

1 Jurisdiction (self government) matters.
2 Effective governing institutions are necessary.
3 Governing institutions must be appropriate to the people.
4 The indigenous nation must have a strategic orientation.

Speaking to the Treaty Commission conference, *Speaking Truth to Power III*, on self government in March, Cornell said jurisdiction matters because, "it puts the development agenda and control of the necessary resources in indigenous hands.

"Without jurisdiction, indigenous nations are subject to other people's agenda. You can't ask people to be accountable if you don't give them decision-making power. Whoever is making the decisions has the accountability. Jurisdiction marries decisions to consequences, which leads to better decisions."

The second critical factor, not surprisingly, is that good government is essential to economic success. Cornell said governments establish and enforce the rules of the game. "Those rules send a message to investors – everybody from some person thinking of taking a job in the nation's government to someone thinking of starting a small business on reserve land – and the message is either, 'Do or don't invest here'."

Thirdly, the governing institution must be culturally appropriate and have the support of the people.

"Institutions that match contemporary indigenous cultures are more successful than those that don't," said Cornell. "On the other hand, there is no blank cheque: institutions have to perform. We've seen nations who have admitted their traditional way of doing things isn't up to the challenges they currently face, but that doesn't mean they just grab a set of institutions off the shelf … it means they spend some hard time trying to invent new institutions that they believe in and that are capable of getting the job done."

The fourth factor for success is strategic orientation. A strategic orientation "encourages politicians to serve the nation instead of themselves because there is an explicit sense of what it is the nation is trying to do."

**"We think the focus of attention should be on helping indigenous nations build themselves through competent governments that are of their own making."**

Dr. Stephen Cornell, co-director, Harvard Project on American Indian Economic Development, speaking at a Treaty Commission conference in March 2002.

# 5 ONE FIRST NATION'S REALITY

*Excerpts from a presentation by Chief Sophie Pierre, Ktunaxa/Kinbasket Tribal Council administrator, to the Treaty Commission conference on self government, March 2002.*

What makes a society? How do you recognize a society? We believe there are four main characteristics, four pillars, if you will, like the four directions. These pillars represent our land, our people, our language and culture and our governance structure. It's pretty much the same the world over. When you threaten one of these, as we see in the Middle East, it leads to war. The ability to govern is the heart of any nation. In our contemporary world this is always the understanding: we all exist within a broader context that places limits on our internal decisions.

We, the Ktunaxa people, have governed ourselves, followed our cultural beliefs and traditions since beyond time in memory. Traditional leadership roles and responsibilities have always been tied to a collective survival. All citizens understand their role and value within their community and tribe and respect the role and value of other citizens within their tribe.

Our ability to exercise full governance has been limited by the relatively recent imposition of the *Indian Act*. The imposition has forced a great deal of difficult change and adjustment within the nation. This new system of governance is deeply flawed for our situation and I argue it is flawed for all aboriginal people in Canada. New distributions of power and authority have created deep divisions within our communities.

One of the most difficult realities that we face is that our previous method of governance, the Ktunaxa governance, has been largely lost through the legislated restriction of First Nations cultural practices within Canada. As we redevelop our governance system, we face an enormous challenge … we have to consider how to blend, first of all, our relationship with and within Canada and British Columbia, secondly, community comfort levels and the new distribution of powers and authorities and expectations created under the last century of governance under the *Indian Act* and lastly, elements of historical government structures and powers that have withstood the passage of time. We need to be creative on how we blend those three areas.

We recognize there are many challenges in developing governance methods to replace current governance structures within our communities. However, we have evolved and adapted through many upheavals and we are confident that we will continue to grow and change to meet these challenges.

Our treaty process is a nation-driven process – all citizens will be consulted on all aspects of the treaty. All citizens will be well informed; all decisions will be made in the best interests of our land, resources, culture, language and the future of the nation.

A community education and citizen involvement process has evolved over this time. The Treaty Council sponsors community meetings in all five communities on a monthly basis. It's the forum to review treaty-related documents, refine collective interests on topics and generally keep on top and review what's going on. There are also youth liaison

workers who hold meetings with the youth, although their involvement is not limited to a separate forum.

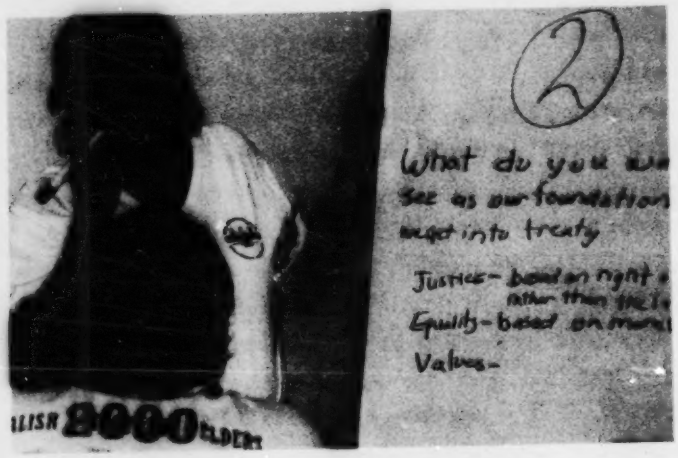
Within our nation we use another forum we call the Treaty Council. The Treaty Council meets on a monthly basis and membership is open to any citizen of the nation. The Treaty Council's role is to help guide the scope and pace of the negotiations. This forum is an opportunity to bring people together on a regular basis from all of our communities to discuss current treaty matters.

Through these forums we first built a respectful conversation and then we began to work on building a collective vision. From this common vision, we then build consensus for whatever the topic or issue we may be discussing. Of course, our internal views are then tempered and modified by the views and interests as a result of negotiating a treaty on a tripartite basis (with the governments of Canada and BC). We build this into the citizen-driven process also.

Our citizen-driven process took a long time to develop – it's not a perfect process and we are constantly refining and adjusting how we operate. We regularly use another forum as well – we call them nation meetings – and they are held every three months, give or take.

We are involved in many initiatives outside the treaty process: a good example of the progression outside the treaty would be in the area of child and family services and the delegated enabling agreement we signed in 1999 as a first step in pre-treaty implementation of governance jurisdiction and authority related to child welfare within our nation.

There are many challenges, many mistakes are made along the way, but we must persevere, for treaty negotiations, according to our perspective, are really a process of rebuilding our nation.

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# THE TREATY COMMISSION

The Treaty Commission is the independent and neutral body responsible for facilitating treaty negotiations among the governments of Canada, BC and First Nations in BC. The Treaty Commission does not negotiate treaties – that is done by the three parties at each negotiation table.

The Treaty Commission and the treaty process were established in 1992 by agreement among Canada, BC and the First Nations Summit. They are guided by those agreements and the 1991 *Report of the BC Claims Task Force*, which is the blueprint for the made-in-BC treaty process. The Treaty Commission and the six-stage treaty process were designed to advance negotiations and facilitate fair and durable treaties.

The Treaty Commission's primary role is to oversee the negotiation process to make sure that the parties are being effective and making progress in negotiations. In carrying out the recommendations of the BC Claims Task Force, the Treaty Commission has three roles – facilitation, funding and public information and education.

The Treaty Commission's operating budget for 2001/2 was $1.9 million and its total operating costs from 1993 to March 31, 2002 are $17,839,485. The Treaty Commission employs a staff of 13.

**Facilitation**

The Treaty Commission is responsible for:

- Offering advice; chairing meetings, where requested; and assisting the parties in developing solutions and in resolving disputes.
- Developing policies and procedures for the six-stage treaty process;
- Monitoring and reporting on the progress of negotiations and encouraging timely negotiations by helping the parties to establish meeting schedules and by monitoring deadlines; and
- Accepting First Nations into the treaty process and assessing when the parties are ready to negotiate.

**Funding**

The Treaty Commission allocates negotiation support funding so that First Nations can prepare for and carry out negotiations on a more even footing with the governments of Canada and BC. For every $100 of negotiation support funding, $80 is a loan from Canada and the remaining $20 comprises a $12 contribution from Canada and an $8 contribution from BC. The Treaty Commission's funding duties include:

- receiving and considering funding requests from First Nations;
- approving the budgets filed by First Nations in support of their workplans;
- allocating funds to First Nations in accordance with funding criteria agreed to by the Principals;
- reviewing annual audit reports and other accounting reports from First Nations that receive negotiation support funding; and
- obtaining evidence of community approval for a funding request.

Since opening its doors in May 1993 the Treaty Commission has allocated approximately $222 million in negotiation support funding to more than 50 First Nations, $177 million as loans and $45 million as contributions. Total funding available to First Nations for 2002/2003 is approximately $38 million.

**1960** | Aboriginal people gain the right to vote in federal elections. The phasing-out of residential schools begins.

left to right > Debra Hanuse, Peter Lusztig, Miles Richardson, Wilf Adam, Jack Weisgerber

# THE TREATY COMMISSIONERS

The Treaty Commission's impartiality and ability to provide a balanced perspective is reflected in its composition and the way it makes decisions. Commissioners do not represent the Principals that appoint them, but act independently. Decisions taken require the support of one appointee of each of the Principals.

The First Nations Summit appoints two commissioners while the federal and provincial governments each appoint one. The chief commissioner is appointed to a three-year term by agreement of the three parties. The four part-time commissioners serve two-year terms.

**Miles Richardson** was appointed chief commissioner in November 1998 and reappointed in November 2001. Prior to this appointment, Mr. Richardson served three years as the First Nations Summit appointee to the Treaty Commission. Mr. Richardson served on the First Nations Summit Task Group from 1991 to 1993 and the B.C. Claims Task Force, whose report and recommendations are the blueprint for the treaty negotiation process. He holds a Bachelor of Arts (1979) from the University of Victoria.

**Wilf Adam** was appointed to the Treaty Commission in April 1995 and re-elected in April 1997, April 1999 and March 2001. Former Chief Councillor of the Lake Babine Band and chair of the Burns Lake Native Development Corporation, Mr. Adam co-founded the Burns Lake Law Centre. Mr. Adam was born in Burns Lake and raised at Pendleton Bay. In 1985, he completed a course in Business Management at the College of New Caledonia in Prince George.

**Debra Hanuse** was appointed commissioner in November 1998 and re-elected in April 1999 and March 2001. Raised in Alert Bay, Ms. Hanuse is a member of the 'Namgis Nation of the Winalagalis Treaty Group. She holds a Bachelor of Arts in Political Science from Simon Fraser University (1986) and a Bachelor of Laws from the University of British Columbia (1990). She was admitted to the Bar in 1991. For four years, she practised corporate, commercial and aboriginal law with the firm of Davis and Company. In 1995, Ms. Hanuse began her own practice where she was involved in treaty negotiations on behalf of First Nations.

**Peter Lusztig** was first appointed to the Treaty Commission in April 1995. He was reappointed in April 1997, April 1999 and March 2001. Former Professor of Finance at the University of British Columbia, Mr. Lusztig served as Dean of the Faculty of Commerce and Business Administration. In addition to his academic experience, Mr. Lusztig played an active role in public affairs as a member of one royal commission and one commission of inquiry and has served with numerous community and business boards. Mr. Lusztig earned his Bachelor of Commerce from the University of British Columbia (1954), his MBA from the University of Western Ontario (1955) and his PhD from Stanford University (1965).

**Jack Weisgerber** was appointed to the Treaty Commission in March 2002. He represented Peace River South in the BC Legislature for 15 years from 1986 to 2001. Mr. Weisgerber became BC's first Minister of Aboriginal Affairs in 1988 and in 1991 he was appointed Minister of Energy, Mines and Petroleum Resources. His leadership was also key to the formation of the BC Claims Task Force.

# PUBLIC INFORMATION AND EDUCATION



Responsibility for public information and education on treaty issues lies with the Treaty Commission as well as the governments of Canada and BC and First Nations.

As the independent 'voice' of the treaty process, the Treaty Commission is uniquely positioned to analyze and demystify complex treaty issues. More British Columbians are turning to the Treaty Commission to learn about treaty making in B.C.

### Ongoing Communications Commitments

The governments of Canada and BC have funded the Treaty Commission to provide public information and education on treaty making in BC since 1997. To reach audiences throughout BC, the Treaty Commission produces a variety of communications tools, including the web site (www.bctreaty.net), annual reports, newsletters, special publications, television documentaries and two traveling touch-screen displays. The 2001 annual report has earned a provincial and a national award from the International Association of Business Communicators.

Visits to the Treaty Commission's web site have steadily increased, nearly doubling from previous years. The site, constantly updated with new information, now includes frequently asked questions and fact sheets on aboriginal rights, self government, land and resources and financial issues. Most of the Treaty Commission's publications are available on-line in print-friendly formats.

In addition, Commissioners regularly deliver presentations to special events, community forums, business organizations, public schools and post-secondary institutions.

### Information Campaign

During the period of the province-wide referendum Treaty Commission staff handled hundreds of telephone calls and emails; the Treaty Commission's web site had more than 10, 000 visitors; and requests for thousands of the Treaty Commission's most popular publications: *Why Treaties? What's the Deal with Treaties, Annual Report 2001* and *A Lay Person's Guide to Delgamuukw* were filled.

### Teaching Tools

In Fall 2000 the Treaty Commission provided the *What's the Deal with Treaties?* educational kit – now in its second print run – to Social Studies 10 and First Nations 12 classes across B.C.

Recognizing that building awareness of treaty making must start at the elementary school level and that the Social Studies 4 curriculum has a strong focus on aboriginal people, the Treaty Commission initiated a project to provide grade 4 teachers with tools on treaty making and self government. Working with accomplished aboriginal teacher and author Diane Silvey and BC publisher Pacific Edge Publishing, the Treaty Commission developed lesson plans to be included within the Teacher's Guide *From Time Immemorial: The First People of the Pacific Northwest Coast.* The Treaty Commission will provide the Teacher's Guide, recommended by the Ministry of Education, to every elementary school in B.C. this October.

**1982** | The *Constitution Act* recognizes and affirms aboriginal and treaty rights – both those that exist and those that may be acquired through a treaty.

### Talking Circles Video Project

Promoting a "voice" for aboriginal women in the BC treaty process was another important public information priority this year. Aboriginal women who participated in a focus group hosted by the Treaty Commission expressed concern that treaty making is a male-dominated process, focusing on issues such as land and resources, rather than on other issues of prime concern to aboriginal women such as health care and child welfare. To address this information gap "talking circles" will be captured on film to articulate some of the common challenges faced by aboriginal women, while also reflecting the diversity among aboriginal women in BC. A pilot video, featuring women of the Ktunaxa Nation (Cranbrook, B.C.), was filmed this year. The Treaty Commission is seeking partner funding to expand the video to include three to four additional talking circles. The finished video will be used as a tool to stimulate discussion among other aboriginal women in B.C.

### Speaking Truth to Power

In March 2000, the Treaty Commission and the Law Commission of Canada brought together a group of opinion leaders – aboriginal and non-aboriginal, industry and government – to talk about the future of treaty making in British Columbia. The two-day forum, *Speaking Truth to Power*, initiated an important legacy for collaborative thinking and has since become an annual event.

Last year, Dr. Stephen Cornell's research on indigenous nations in the United States made an enormous impact on the two-day exchange and, indeed, on the way we think about treaty making in this province. His overriding point is that economic success on indigenous land is strongly linked to the ability to make decisions.

This year, the Treaty Commission invited 14 speakers – including Dr. Cornell – to share their insights on self government. *The Truth III* book, capturing the unique exchange of ideas at the forum, is available on-line at www.bctreaty.net

**1993** | The Treaty Commission officially opens its doors and accepts 29 Statements of Intents to negotiate treaties from First Nations.

# PUBLIC CONSULTATION REMAINS A CONCERN



The governments of Canada and BC are responsible for consulting with British Columbians and representing their interests in treaty negotiations. Through the creation of a Treaty Negotiation Advisory Committee representing the province's major sector interests and regional and treaty advisory committees, the governments of Canada and BC were meeting the requirements for public consultation called for in the BC Claims Task Force Report and outlined in the six-stage treaty process.

The Treaty Commission has repeatedly expressed concern about the Principals' efforts in consultation. In its last annual report the Treaty Commission recommended the Principals seek out independent experts in public consultation to develop a more effective model for the BC treaty process.

But earlier this year the BC government eliminated funding for the advisory groups established as a requirement of the BC treaty process and will rely on its chief negotiators to consult with interested parties. Now many of these advisory groups will be dismantled due to lack of funding with the resulting loss of the expertise gained over the past eight years.

The Government of Canada also has a duty to consult the public, but is re-evaluating its options given the provincial government's change in approach and the fact the protocol for sharing consultation costs is no longer valid now that BC has eliminated funding.

The governments of Canada and BC must ensure there is an effective process in place so that meaningful public consultation occurs and public support for treaty making is maintained.

The Treaty Commission is facilitating regional visioning discussions between First Nations and their neighbours. Regional visioning provides an opportunity for people to consider a collective vision for their region and has the potential to be an influential forum for setting priorities now and after a treaty. However, regional visioning forums are not intended to replace the consultation processes of Canada and BC.

**1994** | Canada recognizes the inherent right to self-government as an existing aboriginal right within the Canadian Constitution.

# A REGIONAL VISION

Regional visioning is an opportunity created by the Treaty Commission for First Nations to build relationships among the people and institutions in their region.

A forum for a regional discussion, regional visioning allows participants to discover their common aspirations and objectives and work together to achieve them. It can also be a forum to deliver information and input to treaty tables.

The Treaty Commission is currently supporting three regional visioning processes involving:

- Cariboo Tribal Council in the Cariboo;
- The Winalagalis Treaty Group on the north end of Vancouver Island; and
- Katzie First Nation in the Lower Mainland.

Early in 2002 the Treaty Commission discussed with the Cariboo Tribal Council a regional visioning process for the Cariboo. The offer coincided with the British Columbia government's decision to stop funding treaty advisory committees, including the Cariboo-Chilcotin Regional Treaty Negotiation Committee. This committee, established in late 1994, comprises local third-party interests. Committee members, including the Cariboo Tribal Council, agreed to the regional visioning process not as a replacement for consultation, but as a broad, relationship-building exercise and in March 2002 agreed to begin a substantive dialogue involving the entire Cariboo community.

A forum was held in April involving approximately 60 people using as their theme, "How can we build healthy and successful individuals, enterprises and communities together in the Cariboo?" Four themes emerged for discussion at later workshops: Tourism and Economic Development; Lands and Resources; Building Relationships; and Fish and Wildlife. Workshops involving local interests, guest speakers and industry experts will take place this fall.

Members of Winalagalis Treaty Group, Da'naxda'xw Awaetlatla Nation, Gwa'Sala-'Nakwaxda'xw Nation, Kwakiutl Nation and Namgis Nation, met with local governments, forest companies, the school district and Anglican Church in Port McNeil on June 5 to determine interest in regional visioning. Following a presentation by the Treaty Commission and discussion of potential areas of regional interest, a decision was made to move forward with a regional visioning process this fall.

Katzie First Nation, its local government neighbours and others in the Lower Mainland region, were to meet in September for a regional visioning project development workshop. A draft proposal for a regional visioning process involving Katzie was expected to be finalized at the meeting.

**1997** | Supreme Court of Canada issues the landmark *Delgamuukw* decision, which confirms that aboriginal land title is a right to the land itself.

# OUR RESOURCE RECOMMENDATIONS

In keeping with its commitment to provide all British Columbians with the resources they need to come to an informed opinion on treaty making, the Treaty Commission produces and provides numerous publications free of charge. Recent publications are available on-line in print-friendly formats at www.bctreaty.net. To request hard copies of Treaty Commission publications, or to inquire about other existing resources, please email info@bctreaty.net or call 800 665 8330.

**Official Documents**

Available at www.bctreaty.net:

*British Columbia Treaty Commission Agreement* September 1992

*Looking Back, Looking Forward: A Review of the Treaty Process.* Treaty Commission publication. Sept. 2001.

*Land and Resource Information for British Columbia* January 2002.

*Improving the BC Treaty Process: Report of the Tripartite Working Group* May 2002.

*Nisga'a Final Agreement 2001 Annual Report* Please visit http://www.ainc-inac.gc.ca/pr/agr/nfa_e.html

*The Report of the British Columbia Claims Task Force* June 1991 Please visit http://www.gov.bc.ca/tno/rpts/bcctf/toc.htm

**Treaty Commission Publications**

Available at www.bctreaty.net:

Update newsletters

Informational brochures

- Why Treaties?
- A lay person's guide to *Delgamuukw*, Treaty Commission

*The Speaking Truth to Power Speech Collection*

The Truth I, II and III books capture various perspectives on treaty making and self government.

**Educational Tools**

Available at www.bctreaty.net:

*What's the Deal with Treaties? Teacher's Kit*

Video, handbook and viewer's guide available on-line. In Fall 2000, the What's the Deal with Treaties? kit was sent to each high school in BC. Additional kits are available upon request.

*Teacher's Guide From Time Immemorial: The First People of the Pacific Northwest Coast*

The Treaty Commission provided the Teacher's Guide, including lesson plans on self government and treaty making, to each elementary school in BC this October. Additional copies may be requested by contacting Pacific Edge Publishing at 800 668 8806 or pacificedge@classroomresource.com.

**Recommended Reading**

*Treaty Talks in British Columbia: Negotiating A Mutually Beneficial Future.* (Second Edition). Chris McKee. UBC Press, 2000

*Prospering Together: The Economic Impact of the Aboriginal Title Settlements in B.C.* (Second Edition). Dr. Roslyn Kunin (Ed). Laurier Institution, 2001.

*Indigenous Difference and the Constitution of Canada* Patrick Macklem. University of Toronto Press. 2001

*Spirit Dance at Meziadin: Chief Joseph Gosnell and the Nisga'a Treaty,* Alex Rose. Harbour Publishing, 2001

*First Nations Women, Governance and the Indian Act: A Collection of Policy Research Reports* Status of Women Canada, 2001

**2000** | The Nisga'a treaty becomes law. The BC Supreme Court rules that self government is a constitutionally protected aboriginal right.